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C O N F I D E N T I A L SECTION 01 OF 03 GUATEMALA 000454

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SUBJECT: SUPREME COURT SELECTION: HIGH STAKES FOR RULE OF  
LAW REFORM

REF: GUATEMALA 170

Classified By: Pol/Econ Counselor Drew Blakeney for reasons 1.4(b,d).

#### Summary

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11. (C) The Guatemalan Congress recently set aside draft legislation that would have cast much needed sunlight on the selection process for the next Supreme Court, which is to be selected not later than October. Congress will soon establish a nominating committee to select the 13 new magistrates via the current opaque process. The slate of candidates the commission produces will likely be the product of a negotiation between the governing UNE party and an exceptionally influential private individual, Roberto Lopez, who has ties to the FRG. CICIG and the Attorney General's Office believe that approximately half of the current, outgoing court is corrupt, and that some of its members are in league with narcotraffickers. The integrity of the incoming Supreme Court is important because the court will influence rule of law reform efforts as well as the fight against organized crime. End Summary.

#### New Supreme Court to be Elected

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12. (C) The 13 magistrates of the Guatemalan Supreme Court are elected for five-year terms. The current court's term is drawing to a close, and a new group of magistrates is to be elected not later than October of this year. The UN-led International Commission Against Impunity in Guatemala (CICIG) estimates that six of the 13 current magistrates are corrupt. CICIG officers and Secretary General Gloria Porras (protect) of the Attorney General's Office separately told Pol/Econ Counselor that they believe at least two of the current magistrates, Edgar Raul Pacay Yalibat and Augusto Eleazar Lopez Rodriguez, receive regular payments from narcotraffickers.

#### Judicial Reform? No Thanks.

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13. (C) In addition to being the country's ultimate court of appeals, the Supreme Court administers the court system, including budgets and judges' assignments and promotions. It therefore has a determinant role in approving or denying much needed reforms to the judiciary. The current court has taken an obstructionist approach to ongoing negotiations with CICIG on the possibility of constituting specialized, hardened courts that would afford protection to judges and prosecutors trying narcotrafficking and other potentially life-threatening cases. It allegedly has at least \$20 million in "savings," which Acting President Eliu Higueros told the Ambassador will eventually be used to build a new

Supreme Court building. Asked whether some of that money could be used to protect vulnerable rural judges, police, and prosecutors who are confronting narcotraffickers, Higueros demurred (reftel). Many speculate that the current magistrates are embezzling some of the interest on the savings, and that they have been unable to come to agreement on electing a Court President because they are fighting over the money.

#### Sunshine Shut Out

14. (C) In part because the next court will play a decisive role in rule of law reform, left-leaning, reformist Congresswoman Nineth Montenegro introduced a bill in Congress that would have made the Supreme Court selection process more transparent. Specifically, her legislation would have: Barred from service on the congressionally-appointed QBarred from service on the congressionally-appointed selection committee persons with criminal records; mandated that the committee evaluate Supreme Court candidates' professional performance; and made public candidates' names so that they could be exposed to public scrutiny. In early May, Congress removed Montenegro's bill from its agenda. President of Congress Roberto Alejos (of the governing UNE party) publicly said that, with the current session of Congress drawing to a close on May 15 and several other, high priority items pending, there was not time to consider the transparency bill. Montenegro and several other pro-reform Members of Congress told Pol/Econ Counselor that Alejos had the option of calling an extraordinary session of Congress in June to consider the bill, which could have been passed prior to the legally mandated deadline of mid-June for constituting

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the Supreme Court nominating committee.

15. (C) Montenegro, Guatemala Bench Congresswoman Rosa Maria de Frade, and Congressman and former President of Congress Jorge Mendez Herbruger separately told Pol/Econ Counselor that there are a variety of interests at work that prefer that the process remain opaque. It appears that the governing UNE party and center-right, opposition FRG are now working to reconcile their lists of potential magistrates that will be submitted to the nominating committee for review. (Note: The nominating committee is to be named by Congress, and consists of representatives of the lawyers' guild, academia, and appellate court judges. It will forward a list of 26 candidates to Congress, from which Congress will choose the 13 new Supreme Court magistrates. End Note). UNE, FRG, and possibly other collaborators have legitimate political interests in appointing politically sympathetic magistrates to the court. The UNE's list is widely rumored to have been developed by First Lady Sandra Torres de Colom. The FRG's list was developed by wealthy businessman Roberto Lopez Villatoro, popularly known as "The King of the Tennis Shoes."

#### The King of the Tennis Shoes

16. (C) Lawyer Roberto Lopez Villatoro is reputed to be a smuggler of licit goods, such as televisions and tires, and additionally is said to import counterfeit tennis shoes, mixing them among the brand-name shoes in his chain of Payless Shoe stores. He is also the former son-in-law of former de facto President Efraim Rios Montt of the FRG, and heads an NGO called "Justice for Change." Lopez developed the FRG's list of candidates. He told Pol/Econ Counselor that his slate of candidates would win election to the court, and to underline his point, noted that his slate won election to the leadership of the Lawyers' Guild. Lopez offered to remit his list of candidates to the Embassy for narcotics vetting. Pol/Econ Counselor responded that the Embassy might vet his candidates, but for the full range of crimes, and that we would not disclose details of any derogatory information we might provide. Lopez never submitted his list. Congresswoman de Frade, Congressman Mendez Herbruger,

and other informed observers privately told us that Lopez has methodically developed a network of judges, some of whom he sent abroad for graduate legal study, who do his bidding. De Frade said the FRG openly sells judicial decisions on Congress's floor. Lopez's judges then execute the decisions.

Mendez Herbruger said Lopez's judges facilitate his smuggling operations.

#### Reform Needed?

17. (C) Views differ on whether the current Supreme Court selection process needs reform. Carlos Larios Ochaita, former Supreme Court President and General Counsel to President Colom, told Pol/Econ Counselor the current selection process is working well. Guatemala is a small country, and the few dozen jurists who are sufficiently accomplished to become candidates for the Supreme Court are well known within the legal community. There is no reason to vet professionals whose work is already well known to peers. Larios Ochaita objected to Montenegro's draft reform legislation, saying it was presented too late and was in any case unconstitutional. He would advise President Colom Qcase unconstitutional. He would advise President Colom against signing such legislation even if it passed, he said. (Comment: while Larios is smart, we believe he has his own agenda, and do not fully trust him.) Congresswoman Montenegro told Pol/Econ Couns that it was fine for the government to work with allies to stack the bench with magistrates who empathize with it politically. However, some were taking advantage of the opaqueness of the process to also nominate magistrates who would protect narcotraffickers and other organized criminals. Subjecting candidates' names to public scrutiny might help to filter out those with links to organized crime, she opined.

18. (C) Secretary General of the AG's Office Gloria Porras said her own experience as a candidate for the Supreme Court highlighted the need for reform. Advised to lobby Congress for a seat on the court, she met with Congressmen from the FRG, who asked whether they could count on her to defend the FRG should a case against it ever arise. On her second trip to Congress, a senior congressional leader had asked that she

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sleep with him in exchange for his support.

#### Comment

19. (C) It is not surprising that the government wants to influence the Supreme Court selection process so as to produce a politically sympathetic court. In its effort to do so, the governing UNE and its congressional allies set aside Montenegro's transparency legislation, and will soon begin the process of selecting the Supreme Court (as well as appellate court judges) via the standing, opaque process. It is in the USG's interest to ensure that the new court is less corrupt and has fewer ties to narcotraffickers than the current one. Doing so is important not only because of the sensitive nature of some of the cases the next Supreme Court will decide, but also because of the Supreme Court's administrative function. Guatemala's courts are corrupt and vulnerable to narcotraffickers' influence. CICIG and the Embassy are working to change that, for which we will need the support of the next Supreme Court. We will continue to use our influence to ensure the cleanest possible outcome, including using public concern about the May 10 Rosenberg murder to press the GOG and opposition to approve the law (septel).  
McFarland